IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

R.S.A. No. 3798 of 2005 (O&M)
Date of Decision : 25.9.2007

Manphool Singh Shastri

.....Appellant

Versus

Haryana Financial Corporation & Ors.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.T.C. Dhanwal, Advocate
for the appellant.

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VINOD K. SHARMA, J. (ORAL)

C.M. No. 10187-C of 2005

For the reasons stated in the application, the delay of 53 days in re-filing the appeal is condoned.

C.M. stands disposed of.

R.S.A. No. 3798 of 2005

This regular second appeal has been filed against the judgment and decree passed by the learned Addl. District Judge, Hisar vide which the decree passed by the learned trial Court ordering injunction in favour of the plaintiff appellant has been reversed.

In para 13 of the impugned judgment, the learned lower appellate Court has been pleased to observe as under :-

> "In addition to all this the jurisdiction of the civil Court is also barred when the proceedings are under the provisions of Haryana Public Moneys (Recovery of

Dues) Act, 1979 and findings of the lower court on issue No. 6 are again erroneous as the trial court concluded that whenever a party makes any order without following the prescribed procedure the civil court has jurisdiction to entertain such kind of matter and when no finger has been raised to the recovery certificate in the plaint and there is nothing on record to show that what procedure was not followed by the authorities while sending the recovery certificate, the civil court was not competent to assume jurisdiction as civil court can assume jurisdiction only in the eventuality that the authorities under a special legislation either exceeded their jurisdiction or did not exercise the jurisdiction in proper manner or acted beyond the scope of authority under the statute. Neither in the plaint recovery certificate could be impleaded nor in the evidence the plaintiff could be successful to show that in which particular respect the recovery certificate was issued in an illegal manner. The suit was filed on 30.10.2002 whereas according to written statement the recovery certificate was sent in the year 1998 and plaintiff cannot claim that he had no knowledge regarding issuance of recovery certificate because Tehsildar has been made a party and in the plaint it is again admitted that plaintiff received notice dated 20.9.2002 from Tehsildar Hansi. In these circumstances, neither the civil court has jurisdiction to go into the

matter as recovery certificate is conclusive proof under Section 3 Sub Section 3 and the Haryana Public Moneys (Recovery of Dues) Act, 1979 and the civil court has no jurisdiction to decide the controversy because jurisdiction is barred under Section 4 of the Act ibid and as such the findings of the lower court are totally erroneous."

In view of the findings recorded above, the learned Courts below should have returned the plaint to the appellant for want of jurisdiction. However, no error can be found with the finding recorded by the learned lower appellate Court that the Civil Court has no jurisdiction to entertain and try the suit in view of the specific bar under the statute.

No ground for interference is made out.

Dismissed.

25.9.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**